IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 902 of 2005 (O&M)
Date of Decision: 21.09.2006

Bhalinder Singh Grewal ...Petitioner

Vs.

Col. (Retd.) Makhan Singh Gill and Anr.

...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.N.S.Bawa, Advocate,
for the petitioner.
Mr.Baldev Kapoor, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the orders passed by the courts below declining the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code) vide which the petitioner herein had claimed an injunction restraining defendant no.2 i.e. Army Welfare Housing Organisation from refunding the amount lying deposited with it to defendant No.1. He further prayed that respondent-defendant be restrained from selling, alienating, leasing mortgaging or transferring his property to anybody other than the plaintiff during the pendency of the suit.

The learned trial Court dismissed the application by holding that there was no claim on the property of the respondent-defendant and the only suit for damages was filed. Learned lower Appellate Court while dismissing the appeal observed as following:-

> "7. Learned Trial Court has rightly observed that it is a suit for the recovery only and not a suit for specific performance of the alleged agreement of sale entered into between the parties. It is also borne apparent from the record that the parties agitated the matter on the criminal side also during course whereof a sum of Rs.16,18,862/- has been paid by Makhan Singh Gill to Bhalinder Singh Grewal which by all standards is substantial part of the amount in dispute. It is so revealed from order dated 22.9.2003 passed by the Honourable High Court of Punjab and Haryana in Cri.Misc. No.11618-M of 2003 that four demand drafts worth Rs.16,18,862/- were handed over by Ld. Counsel for Makhan Singh Gill to the Ld. Counsel for Bhalinder Singh Grewal and were duly accepted by him. This fact also takes care of much apprehended irreparable loss likely to be suffered by the plaintiff. A reference is made by the Ld. counsel for the respondents to 1996 (2) CCC 831 wherein it was held in a case filed by a Bank for the recovery of Rs.80 lakhs asking that defendants/ defaulters need be temporarily restrained from alienate/transfer the mortgaged or hypothecated property. However, none of the properties of the first defendant is mortgaged or hypothecated with the

> plaintiff. He has not sought for specific performance of the contract and his interest in the suit is with regard to the return of the money deposited by him in the name of defendant no.1.As a matter of fact,a sum of Rs.11,83,581/- has been claimed by the plaintiff towards damages/penalty out of total sum of Rs.23,67,162/-. There is substantial merit in the argument advanced by the Ld. Counsel for the respondents that entitlement to damage or penalty and that also speculative damages need not be permitted to be aired by the plaintiff in such a manner so as to claim likely irreparable loss,the extent of his entitlement to damages/penalty would be ascertained at the trial."

Learned counsel for the defendant-respondent moved CM No.26510-CII of 2005 under Order 24 Rule 1 of the Code seeking permission to deposit an amount of Rs.7,47,300/- towards full satisfaction of the claim of the petitioner. It is not in dispute that the balance payment as claimed in the suit already stands paid to the plaintiff-petitioner and only an amount of Rs.7,47,300/- is remained to be paid.

Learned counsel for the petitioner has refused to accept the payment in this Court. Therefore, it would be open to the defendant-respondent to deposit the amount in the Trial Court if so advised.

The contention of the learned counsel for the petitioner is that since his claim is for the recovery of the amount along with interest, there would be no security in case injunction is not granted. The contention is totally misconceived. Total amount as claimed has been offered to the petitioner which is a claim of damages.

In view of the fact that the defendant-respondent has already paid substantial amount and has offered to pay the balance amount there is no equity also in favour of the petitioner which may call for interference with the order passed by the learned courts below by this Court.

Dismissed.

(Vinod K.Sharma)
Judge

21.09.2006
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